IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 17063 of 2004

Between:

M. Ramachandra Reddy, S/o. Yellareddy
R/o. D.No.20/924-A, Cooperative Colony, Kadapa,

Kadapa District.

..... PETITIONER

AND

1 A.P. State Financial Corporation, rep. by its Managing Director,
No. 5-9-194, Chirag Ali Lane, Hyderabad-500 001.
2 M/s. Penna Hotels Pvt. Ltd., rep.by its Managing Director,
Sri.E.Venkata Subbaiah O/o. 2/444, Nehru Nagar,
Madras Road, Shankarapuram, Kadapa Town, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of Mandamus declaring the action of the 1st respondent in rejecting my offer for purchase of the assets of the 2nd respondent Hotel which is a defaulting Unit, by issuing proceedings Ref: AFC/TSC-OPD-III/2004-2005 dt. 6.9.2004 and accepting the OTS proposals of the 2nd respondent for lesser amount is illegal, arbitrary, discriminatory, contrary to public policy and contrary to the notification dt. 31.5.2004 and consequently direct the respondent No.1 to consider and accept the offer of the petitioner made on 30.8.2004 subject to negotiations for purchase of the assets of the 2nd respondent Unit.

Counsel for the Petitioner :**MR.KOWTURU VINAYA KUMAR**

Counsel for the Respondent No.1: **MR.Y.N.LOHITA**

The Court at the admission stage made the following :

ORDER:

The respondent-Corporation issued a paper notification on 06-06-2004 inviting sealed tenders-cum-bids from public for sale of certain assets mentioned therein reserving the right either to accept or reject the tenders or bids without assigning any reason. The last date for offering the bids was 05-09-2004. The petitioner is one of the persons who filed his bid on 30-08-2004 for purchase in respect of the assets of the second respondent covered by the notification. The respondent Corporation sent intimation on 06-09-2004 in response to his bid and it reads as follows:

> With reference to the above, we write to inform you that our Board of Directors, after detailed discussions, at the meeting held on 31-08-2004 resolved not to entertain your offer for purchase of the assets of M/s. Penna Hotels Pvt.Ltd., Cuddapah and to return the demand draft for Rs.5,00,000/- lodged by you for purchase of the said assets. Hence, we are herewith returning the demand draft bearing No.338890, dt.27-08-2004 draw on Bank of Baroda for Rs.5,00,000/- submitted by you.

The petitioner, being aggrieved by the impugned letter intimating that the Corporation resolved not to entertain the offer made by the petitioner for purchase of the assets of the second respondent and to return the demand draft for Rs.5,00,000/-, approached this Court through this writ petition seeking to declare that the action of the first respondent in rejecting his offer for purchase of the assets of the second respondent by issuing the proceedings dated 06-09-2004 and accepting the OTS proposals of the second respondent for lesser amount, is illegal, arbitrary, discriminatory and contrary to the public interest and contrary to the notification dated 31-05-2004 and consequently to direct the first respondent to consider and accept the offer of the petitioner subject to negotiations for purchase of the assets of the second respondent.

The learned Counsel for the petitioner submits that the first respondent-Corporation issued tender notification on seven occasions and resorted to cancel the same on some pretext, or the other and in the present notification also having called for the tenders, failed to accept the tender offered by the petitioner without assigning any reason and they cannot refuse to consider the offer made by the petitioner on the ground that the amount due from the second respondent was finalized under the OTS scheme for a sum of Rs.1,51,00,000/-. He further submitted that when the second respondent remained due to a tune of Rs.11 crores, the first respondent Corporation cannot enter into OTS against the public interest and cannot

put the Corporation to loss when the offer from the petitioner was for Rs.1,55,00,000/-. Therefore, requested to direct the first respondent to consider the bid offered by the petitioner and to pass appropriate orders.

Learned Counsel for the first respondent submitted that no right accrued to the petitioner since the offer was not accepted immediately after the last date provided for filing the bids and when there was no progress in the matter either regarding the price or the negotiations etc., the first respondent has every justification not to accept the offer made by the petitioner for its own reasons and in view of the reservation made in the notification.

There is no right accrued to the petitioner to purchase the assets of the second respondent by virtue of the notification issued by the first respondent. It was only an offer made by the petitioner to purchase the property. Unless and until the offer is accepted, there will not be any concluded contract. Therefore, there is no concluded contract between the parties in connection with the sale of the assets of the second respondent. Unless, there is an existing right to a party and unless he points out any infringement of such right or any obligation on the part of the first respondent to accept the bid offered by him, the petitioner cannot be said to have any prejudice or suffered any infringement of the existing right provided either under any statute or under the constitution of India regarding the OTS between the first respondent and the second respondent.

The learned Counsel for the first respondent submitted that the Board of Directors of the first respondent-Corporation, after due consideration of the matter took a decision to extend the benefit of OTS to the second respondent for a sum of Rs.1,51,00,000/-. Therefore, the petitioner who is a third party to the transaction of the loan cannot question the authority of the first respondent-Corporation in extending the benefit of OTS to the second respondent.

I find sufficient force in the argument advanced by the learned Counsel for the first respondent. Therefore, the petitioner cannot question the validity or otherwise of the transaction of OTS through this Writ Petition.

In the light of the above circumstances, the Writ Petition cannot be maintained. Hence it is dismissed. No order as to costs.

Dr. G. Yethirajulu, J.

Dt:30th September, 2004.

Rns.

To

1 The Managing Director,

A.P. State Financial Corporation,
No. 5-9-194, Chirag Ali Lane, Hyderabad-500 001.

2. Two CD copies.